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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JOSEPH EUGENE PIOVO, Sui juris,
Individually and as Beneficiary of the Vice Roy
United Nations Credit and Commerce
International Blind Trust
1853 Indian Bend Drive
Henderson, Nevada 89074
APN: 178-17-911-009

Plaintiffs,

v.

ROBERT STONE;
RONALD COLQUITT;
MICHELLE WILLIAMS
ANTONIETA TOVAR-GUZMAN;
SHAUNA BRENNAN;
CBSK FINANCIAL GROUP, INC.;
CHICAGO TITLE;
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.; A/K/A
MERS;
MERSCORP HOLDINGS, INC., A/K/A
MERSCORP, INC.;
U.S. BANK NATIONAL ASSOCIATION, AS
TRUSTEE, SUCCESSOR IN INTEREST TO
BANK OF AMERICA, NATIONAL
ASSOCIATION AS SUCCESSOR BY
MERGER TO LASALLE BANK NATIONAL
ASSOCIATION AS TRUSTEE FOR
CERTIFICATE HOLDERS OF BEAR
STERNS ASSET BACKED SECURITIES I,
LLC ASSET BACKED CERTIFICATES,

Case No. 2:13-cv-01922-APG-GWF

**MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.'S
REPLY TO PLAINTIFF'S OPPOSITION
TO DEFENDANT MORTGAGE
ELECTRONIC REGISTRATION
SYSTEMS, INC.'S:**

**(1) MOTION TO DISMISS PLAINTIFFS'
SECOND AMENDED VERIFIED
PETITION FOR DECLARATORY RELIEF
AND COMPLAINT FOR FEDERAL CIVIL
RIGHTS VIOLATIONS (DOCKET 74);
AND,
(2) JOINDER IN U.S. BANK, AS
TRUSTEE'S MOTION TO DISMISS
(DOCKET 75) AND MERSCORP
HOLDINGS, INC.'S MOTION TO
DISMISS (DOCKET 77).**

1 SERIES 2006-HE8;

2 Does 1-100, inclusive,

3
4 Defendants.

5
6 Defendant Mortgage Electronic Registration Systems, Inc. ("MERS"), by and through its
7 undersigned counsel, hereby submits its Reply to Plaintiff's Opposition (Docket 111) to MERS'
8 Motion to Dismiss Plaintiff's Second Amended Verified Petition For Declaratory Relief and
9 Complaint for Federal Civil Rights Violations.

10 By this filing, MERS also joins in the Reply (Docket 89), filed on July 7, 2014, by
11 Defendant U.S. Bank N.A., Successor Trustee to Bank of America, N.A., Successor in Interest to
12 LaSalle Bank, N.A., on behalf of the registered holders of Bear Stearns Asset Backed Securities I
13 LLC, Asset-Backed Certificate, Series 2006-HE8 ("U.S. Bank, as Trustee") and the Reply and
14 Joinder filed on July 7, 2014 by MERSCORP Holdings, Inc., a Delaware corporation
15 ("MERSCORP") (Dockets 90 and 91).

16 MERS' reply and joinder are made and based on the following (all of which are incorporated
17 herein by this reference): (1) the Memorandum of Points and Authorities set forth below, and the
18 exhibits attached hereto; (2) the Memorandum of Points and Authorities attached to/incorporated
19 in U.S. Bank, as Trustee's Reply brief (Docket 89) insofar as the arguments raised therein relate to
20 the MERS vis-a-vis Plaintiff's sole claim/cause of action asserted in Plaintiff's Second Amended

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1 Complaint (Docket 74); (3) the record in this action; and, (4) any arguments that may be presented
 2 at a hearing on MERS' Motion to Dismiss and related joinders.

3 DATED this 15th day of September, 2014.

4 SMITH LARSEN & WIXOM

5 
 6 Kent F. Larsen, Esq.
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 Mortgage Electronic Registration
 Systems, Inc.

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **I. INTRODUCTION**

12 Plaintiff has submitted to the Court an "opposition" brief (Docket 111) (the "Opposition")
 13 which is 58 pages long (excluding exhibits). This filing is in violation of Local Rule 7-4, which
 14 limits such briefs to no more than 30 pages (excluding exhibits). As a result, this Court should
 15 disregard the Opposition brief in its entirety as being in violation of this Court's rules.
 16 Alternatively, this Court should disregard any discussion within the Opposition which is found
 17 beyond page 30 of the Opposition.

18 The Opposition is no more coherent than the Second Amended Complaint (Docket 74) filed
 19 by Plaintiff on May 27, 2014. It provides nothing for the Court on which to base a ruling that the
 20 Second Amended Complaint states a sustainable claim for relief. As has been emphasized in the
 21 briefs of other defendants in this case, the assertions in the Second Amended Complaint do not meet
 22 the threshold standards required of Plaintiff to sustain any "Civil Rights Act" claim(s). *See*
 23 *Whisby-Myers v. Kiekenapp*, 293 F. Supp. 2d. 845, 850 (N.D. Ill. 2003), *Shaare Tefila Congregation*
 24 *v. Cobb*, 481 U.S. 615, 617 (1987) and *Phiffer v. Proud Parrot Motor Hotel, Inc.*, 648 F.2d 548, 551
 25 (9th Cir. 1980).

1 Incredibly, as the Opposition relates strictly to MERS, Plaintiff also takes the position that
 2 he was not actually a party to the Eight Judicial District Court Case A530199 entitled *Viceroy*
 3 *United Nations Credit and Commerce International Ltd. and Joseph Piovo, individually and as*
 4 *President of the Corporation* (the “Nevada State Case”) (emphasis added) or bound by the judgment
 5 rendered against him in that case. This is an absurd position.

6 The record in the Nevada State Case is clear that the Plaintiff in this case – Joseph Piovo –
 7 was a Plaintiff in the Nevada State Case. In fact, after the operative order was issued in March 2009
 8 granting summary judgment in favor of MERS on the operative claims against Plaintiff and Viceroy
 9 United Nations Credit and Commerce International Ltd. (regarding which NRCP Rule 54(b)
 10 certification was provided) , the Plaintiff – in proper person – filed an appeal and prosecuted the
 11 same through the Nevada Supreme Court. After that appeal was rejected, any remaining claims
 12 involving claims by and between Plaintiff and any other parties appear to have lapsed and the
 13 Nevada State Case was dismissed. As a result, there can be no doubt that any claims by Plaintiff
 14 not asserted in the Nevada State Case by Plaintiff may now not be brought in this action.

15 **II. PLAINTIFF JOSEPH PIOVO, INDIVIDUALLY, WAS A PARTY TO THE NEVADA** 16 **STATE CASE**

17 Plaintiff accuses MERS of misrepresenting to the Court that Plaintiff was, in fact, a Plaintiff
 18 in the Nevada State Case. *See* the Opposition, at page 5, lines 4-12. Plaintiff then acknowledges
 19 in the Opposition that he may have been a party to the Nevada State Case, but that he is somehow
 20 not bound by the judgment of that Court in the Nevada State Case. *See* the Opposition, at page 5,
 21 lines 20-26. Both positions are untenable.

22 A clear review of the record in the Nevada State Case reflects that Plaintiff – as an individual
 23 – was a plaintiff and counterdefendant in the Nevada State Case. *See* the Declaration of Kent F.
 24 Larsen, Esq., attached hereto as **Exhibit A** and Exhibits A-1 through A- 15 thereto. A listing of the
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documents which are Exhibits A-1 through A- 15 is as follows:¹

Exhibit A

- A-1 Initial Appearance Fee Disclosure (Filed: 10/19/06)
- A-2 Complaint to Quiet Title (Filed: 10/19/06)
- A-3 Amended Complaint to Quiet Title and to Enjoin Foreclosure and Public Auction (Filed: 8/9/07)
- A-4 Plaintiffs' Opposition to Motion for Summary Judgment (Filed: 11/5/08)
- A-5 Plaintiffs' Second Supplemental Exhibits to Opposition to Motion for Summary Judgment (Filed: 2/5/09)
- A-6 Order Granting Motion for Partial Summary Judgment; Dismissing Third-Party Complaint; Vacating Preliminary Injunction; and Certifying as Final (Filed: 3/25/09)
- A-7 Transcript of Proceedings Defendant Mortgage Electronic's Motion for Partial Summary Judgment (Filed: 4/13/09)
- A-8 Notice of Appeal (Filed: 4/16/09)
- A-9 Civil Appeal Statement (Filed: 4/16/09)

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MERS requests the Court take judicial notice of any exhibits hereto which are documents filed with the Eighth Judicial District Court. Courts may take judicial notice of public records. *See* Fed. R. Evid. 201. Moreover, Nevada law allows for a court to take judicial notice of a fact if it is "(a) Generally known within the territorial jurisdiction of the trial court; or (b) Capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, so that the fact is not subject to reasonable dispute." NRS 47.130. A court may take judicial notice of matters of public record. *See, e.g., Caballero v. Seventh Judicial Dist. Ct.*, 123 Nev. 316, 167 P.3d 415 (2007); *Mack v. South Bay Beer Distribs., Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986), *overruled on other grounds by Astoria v. Fed. Sav. & Loan Ass'n v. Solimino*, 501 U.S. 104 (1991). Further, a court may take judicial notice of documents filed for cases in other jurisdictions involving the same subject matter as the case at bar. *See, e.g., Round Hill Gen. Improvement Dist. v. Newman*, 97 Nev. 601, 603, 637 P.2d 534, 536 (1981) (not reasonably subject to dispute that the subject matter in the federal case was the same as in the state case).

1 A-10 Ex Parte Application for Preliminary Injunction, Stay of the
2 Judgment and Temporary Restraining Order Pending Disposition of
3 the Appeal to the Supreme Court of Nevada (Filed: 4/28/09)

4 A-11 Certification in Support of Application (Filed 4/28/09)

5 A-12 Order Granting a Stay; Preliminary Injunction; Temporary
6 Restraining (Filed: 5/21/09)

7 A-13 Order of Affirmance (Filed: 12/31/09)

8 A-14 Clerk's Certificate (Filed: 1/28/10)

9 A-15 Civil Order to Statistically Close Case (Filed: 8/21/10)

10 Even a cursory review of Exhibits A-1 through A- 15 reveals that Plaintiff – as an individual
11 – was a party to the Nevada Sate Case from the outset. Moreover, when the March 25, 2009 Order
12 Granting Motion for Partial Summary Judgment; Dismissing Third-Party Complaint; Vacating
13 Preliminary Injunction; and Certifying as Final was entered by the Court (Exhibit A-6), Plaintiff
14 then appears to have prosecuted the appeal of that order which certified as a final judgment. See
15 Exhibits A-8 and A-9.

16 When Plaintiff sought, pending resolution of the appeal, to have a restraining order entered
17 to prevent non-judicial foreclosure of the property at issue in this litigation, Plaintiff filed a
18 “Certification In Support of Application” on April 28, 2009 (Exhibit A-11), which certified various
19 statements as being true, including:

20 “I, Joseph Piovo, of full age, being a Plaintiff in the above captioned case state:

- 21 1. Pursuant to the District Court Order filed by Honorable Ellisa L. Cadish on
- 22 March 26, 2009, the Plaintiffs have filed timely Notice of Appeal to the
- 23 Supreme Court of Nevada on April 16, 2009.

24 ...

4. The foreclosure sale auction will cause the Plaintiffs irreparable damage for which Plaintiffs have no adequate remedy at law, as more fully appears in the verified Amended Complaint on file.

See Exhibit A-11. It is important to note that Plaintiff verified the Amended Complaint, in his individual capacity. See Exhibit A-3.

Due to the foregoing, Plaintiff cannot seriously take the position that he was not a party to the Nevada State Case. Plaintiff cannot also take the position he is not bound by the Court's judgment as entered in the Nevada State Case relative to the real property located at 1853 Indian Bend, Henderson, Nevada (APN 178-17-811-009) (the "Property"). This is the same property which is at issue in this litigation. The March 25, 2009 Order Granting Motion for Partial Summary Judgment; Dismissing Third-Party Complaint; Vacating Preliminary Injunction; and Certifying as Final (Exhibit A-6) was entered against all plaintiffs/counterdefendants in that case – including Plaintiff. Plaintiff then appealed that judgment and his appeal was repudiated. See Exhibits 13 and 14. Thereafter, to the extent there were claims remaining relative to parties other than MERS and the plaintiffs/counterdefendants in the Nevada State Case, those claims were dismissed by the state court's August 21, 2010 "Civil Order to Statistically Close Case" (Exhibit A-15).

Almost four years later – on May 27, 2014 – Plaintiff then files his Second Amended Complaint (Docket 74), attempting to assert a claim under a civil rights statutory scheme relative to alleged actions occurring between 2005 and 2007.

III. PLAINTIFF MISCONSTRUES/MISUNDERSTANDS THE DOCTRINE OF CLAIM PRECLUSION, WHICH BARS ANY CLAIMS IN THIS CASE BY PLAINTIFF, WHETHER OR NOT ASSERTED BY PLAINTIFF IN THE NEVADA STATE CASE

The doctrine of *res judicata* or claim preclusion promotes finality, certainty and judicial efficiency by barring re-litigation of claims. *Berwind Corporation v. Apfel*, 94 F.2d 597, 608 (E. D. Pa. 2000) (citing *Gregory v. Chehi*, 843 F.2d 111, 116 (3rd Cir. 1988)). See also *Allen v. McCurry*, 449 U.S. 90, 94, 101 S. Ct. 411, 66 L.Ed. 2d 308 (1980).

1 Claim preclusion applies to all claims that were or could have been raised in the Nevada
 2 State Case, whereas issue preclusion ostensibly only applies to issues that were actually and
 3 necessarily litigated and upon which there was a final determination on the merits. *See Five Star*
 4 *Capital Corp. v. Ruby*, 124 Nev. 1048, 1055 (2008) (footnotes omitted)(quoting *Univ. of Nev. v.*
 5 *Tarkanian*, 110 Nev. 581, 599, 879 P.2d 1180, 1191 (1994). The court in *Five Star* explained this
 6 distinction as follows:

7 “[C]laim preclusion applies to preclude an entire second suit that is based on the
 8 same set of facts and circumstances as the first suit, while issue preclusion ... applies
 9 to prevent relitigation of only a specific issue that was decided in a previous suit
 10 between the parties, even if the second suit is based on different causes of action and
 11 different circumstances.”

12 *Id.* The court recognized that in some cases, both claim and issue preclusion could apply. *Id.*

13 In the present case before this Court, despite that no “civil rights” claims were asserted by
 14 Piovo in the State Court Case, the operative alleged operative facts in this case have not changed
 15 since Plaintiff filed the State Court Case. As a result, Plaintiff at any time could have raised his
 16 unsustainable “civil rights” claims in the earlier action and chose not to do so. As a result, he is
 17 barred by raising any such claims in this action as against MERS.

18 IV. CONCLUSION.

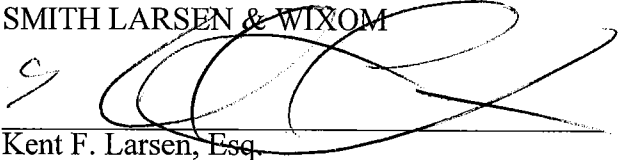
19 Title 42 U.S.C. §1983 provides a federal cause of action against any person, who, acting
 20 under color of state law, deprives another of his federal rights. *Conn v. Gabbert*, 526 U.S. 286,
 21 290 (1999). To prove liability under §1983, a plaintiff must:(1) show that a person acting under
 22 color of state law engaged in some type of conduct which (2) deprived the plaintiff of some right,
 23 privilege or immunity secured by the Constitution or federal statutory law. *Paratt v. Taylor*, 451
 24 U.S. 527, 535 (1981), *overturned on other grounds by Daniels v. Williams*, 474 U.S. 327 (1986).

25 In this instance, Plaintiff has not alleged (nor can he demonstrate) any such action or actor.
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1 For the reasons set forth herein, and because there are no legally sustainable claims asserted
2 by Plaintiff in this action against MERS, this action should be dismissed as against MERS.

3
4 Dated this 15th day of September, 2014

5 SMITH LARSEN & WIXOM

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of September, 2014, a true copy of the foregoing Mortgage Electronic Registration Systems, Inc.'s Reply to Plaintiff's Opposition to Defendant Mortgage Electronic Registration Systems, Inc.'s: (1) Motion to Dismiss Plaintiffs' Second Amended Verified Petition For Declaratory Relief and Complaint for Federal Civil Rights Violations (Docket 74); and, (2) Joinder in U.S. Bank, as Trustee's Motion to Dismiss (Docket 75) and Merscorp Holdings, Inc.'s Motion to Dismiss (Docket 77), was served electronically via CM/ECF, or by mail, postage prepaid, to the following:

10 Joseph Eugene Piovo
11 1853 Indian Bend Drive
12 Henderson, Nevada 89074
13 Plaintiff in Proper Person
14 Email: viceroynuncci@gmail.com
15 (Served Via U.S. Mail)

16 Robert Stone
17 659 E. 660 North
18 Orem, Utah 84091
19 Defendant in Proper Person

20 Scott S. Bell, Esq.
21 201 S. Main Street, Suite 1800
22 Salt Lake City, Utah 84111
23 -and-

24 Robert W. DeLong, Esq.
25 50 W. Liberty Street, Suite 750
26 Reno, NV 89501
27 Attorneys for Defendant U.S. Bank N.A.,
28 Successor Trustee to Bank of America, N.A.,
Successor in Interest to LaSalle Bank, N.A.,
On behalf of the registered holders of Bear
Stearns Asset Backed Securities I LLC,
Asset-Backed Certificate, Series 2006-HE8
(Via ECF System)

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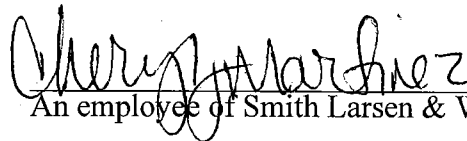
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